

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Application No. : 10/804,585
Confirmation No. : 7261
Applicant : Kathleen Nylund Jackson
Filed : March 18, 2004
Title : Progressive Game with Bonus
TC/A.U. : 3715
Examiner : Kang Hu

Docket No. : 247079-000299USPT
Customer No. : 70243

Mail Stop Appeal Brief – Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

CORRECTED APPEAL BRIEF PURSUANT TO 37 C.F.R. § 41.37

Dear Commissioner:

This Corrected Appeal Brief is filed pursuant to the Appellants' appeal to the Board of Patent Appeals and Interferences ("Board") from the final rejection of claims 1-8, 10, 15-21 and 23-28 in the March 17, 2010 Final Office Action. (Exhibit B). A Notice of Appeal is filed herewith. The due date for this Appeal Brief is two months from the mailing date of the Notice of Appeal and this brief is being timely filed. Applicant believes that pursuant to M.P.E.P. 1207.04, no fees are due because of the fees paid in conjunction with the previously submitted Appeal Brief. A Notice of Non-Compliant Brief was received on June 4, 2010 indicating that the concise explanation of the subject matter did not cite to the specification and claims 1 and 21 were not consistent with the previous amendment. Applicant is submitting this corrected brief

with proper citations to the specification in Section 5 and a claim appendix that is consistent with the last amendment in this case.

1. REAL PARTY IN INTEREST

The real party in interest of the above-captioned patent application is the Assignee, WMS Gaming, Inc.

2. RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences known to Appellant that will have a bearing on the Board's decision in an appeal of this matter.

3. STATUS OF THE CLAIMS

Claims 1-8, 10, 15-21 and 23-28 remain in the application for further prosecution. Claims 9, 11-14 and 22 have been canceled previously.

4. STATUS OF AMENDMENTS

No amendments have been made subsequent to the last amendment filed on November 3, 2009.

5. SUMMARY OF CLAIMED SUBJECT MATTER

Aspects of the present inventive subject matter include, but are not limited to, methods and systems for awarding randomly selected bonuses for selected ones of a community of

players as shown in Figs. 1 and 5-11. Claim 1 generally relates to a method of playing a gaming system 10 played by a plurality of players where a jackpot is awarded. *See* ¶ 46, Figs. 1 and 5-11, U.S. Publication No. 2005/0014548¹ (Exhibit A), Specification, p. 11, ll. 11-25. Players play an underlying wagering game 20 in which wagers are made by players via a plurality of wager input devices 52, 54 and 58. (Ex. A, ¶¶ 35, 46, 50, Specification, p. 8, ll. 14-15, p. 11, ll. 20-25, p. 13, ll. 3-8). When an outcome occurs in the underlying wagering game 20 that identifies that a jackpot is to be awarded to at least one of the players, a special bonus event for all of the players presently playing the underlying wagering game is entered providing a chance to be awarded bonuses. (Ex. A, ¶¶ 35, 78, Specification, p. 8, ll. 15-18, p. 20, ll. 4-9). Bonuses to be awarded in the special bonus event are randomly selected via a processor 32. (Ex. A, ¶ 37, Specification, p. 8, ll. 23-25). More than one but less than all of the players are randomly selected to be awarded the randomly selected bonuses. (Ex. A, ¶¶ 37, 78, 87, Specification, p. 8, ll. 23-25, p. 20, ll. 9-12, p. 21, ll. 5-10). At least one player is excluded from being awarded any bonus. (Ex. A, ¶ 35, Specification, p. 8, ll. 15-17). The randomly selected bonuses are in addition to any awards the players may win during continued play of the underlying wagering game. (Ex. A, ¶ 77, Specification, p. 19, l. 25 to p. 20, l. 2).

Claim 21 generally relates to a method of playing a gaming system 10 played by a plurality of players where a jackpot is awarded. (Ex. A, ¶ 46, Specification, p. 11, ll. 20-25, Fig. 1). Players are permitted to play underlying wagering games 20 in which wagers are made by the players via wager input devices 52, 54 and 58. (Ex. A, ¶¶ 35, 50, Specification, p. 8, ll. 14-15, p. 13, ll. 3-8). When an outcome occurs in one of the underlying wagering games 20 that

¹ The Publication for the application at issue is being attached for convenience as Exhibit A. Applicant is also providing the corresponding specification page and line number in this and following sections.

identifies that a jackpot is to be awarded to at least one player, a special bonus event for all players presently playing the underlying wagering games is entered providing a chance to be awarded bonuses. (Ex. A, ¶ 35, 78, Specification, p. 8, ll. 15-17, p. 20, ll. 5-9). Bonuses to be awarded are randomly awarded via a processor 32. (Ex. A, ¶ 37, Specification, p. 8, ll. 23-25). More than one but less than all players are randomly selected to be awarded the randomly selected bonuses in addition to any awards the some of the players may win during continued play of the underlying wagering games. (Ex. A, ¶¶ 37, 78, 87, Specification, p. 8, ll. 23-25, p. 20, ll. 9-12, p. 21, ll. 5-10). At least one player is excluded from winning any award. (Ex. A, ¶ 35, Specification, p. 8, ll. 15-17). The randomly selected bonuses are based upon a progressive bonus jackpot. (Ex. A, ¶ 89, Specification, p. 21, ll. 20-23).

6. GROUNDS FOR REJECTION TO BE REVIEWED ON APPEAL

I. Whether claims 1-8, 16-21 and 23-26 and 28 were improperly rejected under 35 U.S.C. 102(e) as anticipated by Olsen (U.S. Patent No. 6,146,273 attached as Exhibit C)

II. Whether claims 10, 15 and 27 were improperly rejected under 35 U.S.C. 103(a) as being unpatentable over Olsen in view of Luciano (U.S. Pat. No. 6,887,154 attached as Exhibit D).

Claims 1-8, 16-21 and 23-26 and 28 are rejected under 35 U.S.C. 102(e) as being unpatentable over Olsen (Ex. C). With regard to claims 1 and 21, the Final Office Action asserted that Olsen teaches a method of playing a gaming system played by a plurality of players. (Ex. B, p. 2). The Final Office Action cited Col. 5, ll. 1-2 and 16-22 of Olsen as disclosing playing an underlying wagering game in which wagers are made by players. (Ex. B, p. 2). The Final Office Action asserts that Olsen discloses when an outcome occurs in the underlying

wagering game that identifies that a jackpot is to be awarded to at least one of the players, entering a special bonus event for all of the players citing Col. 7, ll. 50-53, fig. 4 and Col. 12, ll. 20-25. (Ex. B, p. 2). The Final Office Action noted that Olsen discloses randomly selecting bonuses to be awarded in the special bonus event citing Col. 16, l. 64 to Col. 17, l. 27. The Final Office Action asserts that Olsen discloses randomly selecting more than one but less than all of the players to be awarded the randomly selected bonus and excludes at least one player from being awarded any bonus. (Ex. B, p. 3). The Final Office Action notes that Olsen discloses the randomly selected bonuses are in addition to any awards some of the players may win during continued play of the underlying wagering game citing Col. 17, ll. 46-61. (Ex. B, p. 3).

7. ARGUMENT

For the Board's convenience, claims 1-8, 10, 15-21 and 23-28 are one group that will stand or fall together. The present claims allow for some but not all random players playing over multiple gaming terminals the opportunity to be selected for a random award when one of the players triggers a communal bonus event. The random bonuses are triggered by an outcome of the underlying wagering game which awards a jackpot. Neither of the references of record disclose these concepts.

A. Claims 1-8, 10, 15-21 and 23-28 Were Improperly Rejected Under 35 U.S.C. 103(a) As Being Anticipated By Olsen

1. The Deficiencies in Olsen

The Olsen reference cited by the Final Office Action discloses a bonus type scheme based on connecting a controller component to existing banks of machines without modifying the machines themselves. For example, Fig. 2 shows a controller 200 that is coupled to existing

gaming machines G1-Gk having interface cards via a network 202. (Ex. C, Col. 7, ll. 3-28). Since the controller in Olsen is added to a network of existing machines, but cannot be implemented within the machines themselves, the Olsen bonus may only be triggered by the coin-in (contributions) from each machine. The controller in Olsen cannot trigger the bonus based on game outcomes because there is no teaching of modifying the existing machines to send outcome data to the controller. Each coin-in contribution from the gaming machines increments a current value 220. (Ex. C, Col. 7, ll. 30-39). Once the current value 220 exceeds a bonus mode activation trigger 218, a bonus mode time period is announced. (Ex. C, Col. 7, ll. 50-60).

2. Olsen Does Not Trigger A Special Bonus Event When An Outcome Occurs In The Underlying Wagering Game That Identifies A Jackpot

Claims 1 and 21 require that “when an outcome occurs in the underlying wagering game that identifies that a jackpot is to be awarded to at least one of said players,” “a special bonus event for all of said players presently playing the underlying wagering game” is entered. In other words, one of the players must be awarded a jackpot as a result of a game outcome to trigger the special bonus event. Olsen does not anticipate these claims because the awarded bonus event in Olsen is triggered by the coin in of one of the eligible machines and not a jackpot awarded on one of the machines based on a game outcome. (Ex. C, Col. 7, ll. 50-60) For example, Olsen explains that “**upon insertion of monetary value** into that machine ... will increment 244 the current value 220 to equal or exceed 246 the bonus mode activation trigger value 218 to start 248 the bonus mode time period.” (Ex. C, Col. 7, l. 67 to Col. 8, l. 5, emphasis added).

The Final Office Action has cited Col. 7, ll. 50-53 of Olsen as disclosing a jackpot to be awarded to at least one of said players. (Ex. B, p. 2). However, this section only states that

when “the current value 220 equals or exceeds 246, the controller 200 starts 248 the bonus mode time period.” (Ex. C, Col. 7, ll. 50-52). This section does not disclose awarding a jackpot to at least one of the players when a game outcome occurs or the awarding of the jackpot triggering the special event. In fact, this section teaches away from this element since it is the coin-in (contribution) that is collected from a player, before any game outcome occurs, to increment the current value 220 and potentially trigger the bonus game (Ex. C, Col. 7, ll. 31-36). The bonus in Olsen is not triggered by the game outcome, it is triggered by coin-in occurring before any game outcome that may be determined.

The Final Office Action also cited Fig. 4, element 248 which is the start bonus mode and Col. 12, ll. 20-25 of Olsen as disclosing triggering a jackpot award. (Ex. B, p. 2). Fig. 4 is a timing diagram that does not disclose triggering the start bonus mode 248 by a player being awarded a jackpot as a result of an outcome in the underlying game. In fact, Fig. 4 shows that a monetary value bet by player P8 triggers the bonus mode time period by causing the current value 220 to equal the bonus mode activation trigger 218. (Ex. C, Col. 11, ll. 13-21). This jackpot is therefore awarded before any game outcome occurs and is thus not triggered by a game outcome. Col. 12, ll. 20-25 discusses eligibility criteria and does not disclose the condition to start the bonus mode as the awarding of a jackpot from an outcome of the underlying game as required by these claims. (Ex. C).

The Final Office Action ignored the above arguments in the response to arguments section by focusing exclusively on Olsen teaching triggering the jackpot award to at least one player. (Ex. B, p. 5). As explained above, Applicant continues to contend that claims 1 and 21 are not anticipated by Olsen, because Olsen does not disclose entering a special bonus event when a jackpot is awarded to at least one player when an outcome occurs in the underlying

wagering game. Such a process is impossible with Olsen because Olsen uses a controller that is externally coupled to receive the coin in data from existing gaming machines and cannot determine whether any game outcome has occurred on any of the gaming machines. Claims 1 and 21 and their dependents are therefore allowable over Olsen.

3. Olsen Does Not Disclose Excluding One Player And Randomly Selecting More Than One But Less Than All of the Players To Be Awarded Randomly Selected Bonuses

Independent claim 1 requires “excluding at least one player from being awarded any bonus” in addition to “randomly selecting more than one but less than all of said players to be awarded the randomly selected bonuses and excluding at least one player from any bonus.” Independent claim 21 requires “excluding at least one player from winning any award.” Olsen does not anticipate either of these elements because all of the eligible players may win the bonus award and none of these players are excluded. As explained above, the possibility of being excluded heightens the excitement in anticipation of the bonus award in the present claims.

The Final Office Action cites Col. 14, ll. 8-10 of Olsen as disclosing excluding at least one player from being awarded any bonus. (Ex. B, p. 3). This section simply discloses that a random selector 270 randomly selects gaming machines to award bonus jackpots. (Ex. C, Col. 14, ll. 8-10). Olsen does not disclose specifically excluding any players from being awarded any bonus award. The Final Office Action also cites Col. 16, ll. 24-30 as disclosing “never selected to receive a bonus.” (Ex. B, p. 3). This section only discloses that players may receive the bonus as long as they place unit bets. (Ex. C, Col. 16, l. 24-26). Nothing in this or any other section discloses specific exclusion of a player from being awarded a bonus since all players that place bets may receive the bonus award. Since, Olsen does not disclose exclusion of a player being awarded a bonus, claims 1 and 21 are allowable over Olsen.

B. Claims 10, 15 and 27 Were Improperly Rejected Under 35 U.S.C. 103(a) As Unpatentable Over Olsen In View Of Luciano.

Claims 10, 15 and 27 are allowable for the same reasons that independent claims 1 and 21 are allowable.

8. CLAIMS APPENDIX

A clean copy of the claims 1-8, 10, 15-21 and 23-28 involved in the appeal is included in the Claims Appendix.

9. EVIDENCE APPENDIX

A copy of the evidence relied upon by the appellant is included in the Evidence Appendix and is herein referenced. A list of evidence and where each was entered in the record is included in the Index to the Appendices.

10. RELATED PROCEEDINGS APPENDIX

As there are no related proceedings, no information is provided in the Related Proceedings Appendix.

Conclusion

For at least the foregoing reasons, the final rejection of appealed claims 1-8, 10, 15-21 and 23-28 set forth in the Final Office Action mailed March 17, 2010, should be reversed.

Respectfully submitted,

Date: July 6, 2010

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